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BOOK REVIEWS.

A TREATISE ON DAMAGES. By Joseph A. Joyce and Howard C. Joyce. In Three Volumes. NEW YORK: The Banks Law Publishing Co. 1903, 1904. pp. dlxvi. 2669.

In general plan and scope, this treatise is not unlike that of Judge Sutherland on the same subject. The fundamental principles of the law of damages are set forth in an orderly manner, "after which," in the words of the preface, "each and every specific subject, wherein the question of the recovery of damages or the measure thereof has arisen in the Courts, is fully and conscientiously discussed and presented and is made thorough and complete within itself." This method results in considerable, if not unnecessary, repetition. Several topics, for example, which are discussed with much fulness in the fourth chapter, such as "certainty as a requisite" and "proximate cause," are presented again in various special connections, and a host of authorities re-cited.

This repetition, united as it is with a diffuse style, accounts in part for the bulk of these volumes. It is not the sole explanation, however. The law of damages covers a large and rather indefinite domain. The cases in which the topic has been discussed are almost innumerable, and the difficulty of distinguishing its principles from others which are closely associated with them in the same litigation is undoubtedly great. Still, it would seem to be unnecessary, in a treatise on damages, to discuss the substantive law of contracts, of property or of torts. It is by eliminating such discussion, that Mayne has kept his treatise within the limits of one moderate sized volume. It is by including such discussion, that Sedgwick and Sutherland and now Joyce have expanded their works into cyclopaedias.

In the volumes before us, some topics are presented with a fulness unwonted even in treatises on damages. "Damages for personal injuries and for the death of a human being have occupied so largely in excess of others the attention of the Courts," we are told in the preface, that "the authors have given to them the space and prominence which their consideration necessitates." Whether so much space should have been given to this branch of the subject is questionable; but the care with which the statutes have been analyzed and grouped, as well as the excellent classification of cases decided under them, renders this part of the work most valuable.

On the other hand, some topics appear to have received inadequate treatment. For example the damages recoverable against joint wrongdoers, or against one whose negligence has united with the negligence of a third party in causing injury to the plaintiff, are referred to but incidentally. It must be confessed, too, that one of the few references to this topic is not very successfully phrased. Here is the language: "And when one of two causes combine to produce an injury, both of

which are in their nature proximate, one being culpable negligence of the defendant without which the accident would not have happened, and the other some accident for which neither party is responsible, the defendant is liable in damages." The authority cited for this proposition is *Leeds v. New York Telephone Co.* 64 App. Div. 484; a case which has been reversed recently in the Court of Appeals—175 N. Y. 118. A much better statement of the true doctrine upon this point will be found in Judge Vann's dissenting opinion.

The usefulness of the notes has been increased by adding to each case cited, its volume and page in unofficial reports and in each series of selected cases. Nothing but praise can be accorded to the publishers for their part in this enterprise.

ENGLISH AND INDIAN LAW OF TORTS. By Ratanlal Ranchhoddas and Dhirajlal Keshavlal. Second Edition. Bombay: The Bombay Law Reporter Office. 1903. pp. civ, 581.

This is a very interesting and instructive book. It is interesting, not simply by reason of the manner in which an important branch of the law is presented to the reader, but by reason of the personality of the authors. They belong to a race, whose civilization was ancient, when the legal system which they lucidly expound in the volume before us was in its infancy. They are fine representatives of that "multitude of young educated Bengalis who give themselves to the law," to quote the words of Sir Henry Maine, and whose "aptitude for the pursuit of the law is now placed beyond question."

The book is especially instructive, by reason of its full and careful statement of Indian case-law. While the greater part of the text is devoted to the exposition of English common law principles, not a topic is dismissed without some reference to the decisions of the Indian courts, or to local legislation. For example, the discussion of the English doctrine of "the merger of a tort in felony" is supplemented by a digest of several Indian cases, which show that the courts of this dependency prefer the American rule on this subject, to that of England. Again, in dealing with the exemption of judicial officers from tort liability, the authors cite a statute and decisions modifying the common law doctrine, and limiting the exemption of judges "to acts done by them in good faith in the discharge of their judicial functions."

While the authors acknowledge their indebtedness to Sir Frederick Pollock for the order in which some of the topics are presented, they have based their classification mainly on the lines of Sir Henry Finch's view of the subject, as presented in his *Discourse of Law* more than three centuries ago: "Our law regards the person above his possessions—life and liberty most—freehold inheritance above chattels, and chattels real above personal." Accordingly, after dealing with the general principles of the law of torts, they discuss specific torts in the following order: First, those relating to person and reputation. Second, those relating to real property. Third, those relating to personal property. Fourth, those affecting both person and property, such as fraud, nuisance and negligence.